

LEGISLATIVE BILL 552

Approved by the Governor April 28, 1999

Introduced by Landis, 46

AN ACT relating to recordings and filings; to amend sections 52-1307 and 52-1314, Reissue Revised Statutes of Nebraska, and sections 9-313, 9-402 to 9-406, and 9-412, Uniform Commercial Code; to change provisions relating to signature and filing requirements; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 52-1307, Reissue Revised Statutes of Nebraska, is amended to read:

52-1307. Effective financing statement means a statement that:

(1) Is an original or reproduced copy thereof;

(2) Is signed and filed by the secured party in the office of the Secretary of State;

(3) Is signed by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;

(4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is used or produced or to be used or produced, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to 52-1321;

(5) Shall be amended in writing, within three months, similarly signed and filed, to reflect material changes;

(6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refiling or filing a continuation statement within six months before the expiration of the five-year period;

(7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;

(8) Is accompanied by the requisite filing fee set by section 52-1313; and

(9) Substantially complies with the requirements of this section even though it contains minor errors that are not seriously misleading.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

Any effective financing statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-1701 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Sec. 2. Section 52-1314, Reissue Revised Statutes of Nebraska, is amended to read:

52-1314. (1) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subdivision (6) of section 52-1307. Any such continuation statement shall be signed by the secured party, ~~and the debtor or debtors,~~ identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective until termination of the insolvency

proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(2) Any continuation statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-1701 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Sec. 3. Section 9-313, Uniform Commercial Code, is amended to read: 9-313. Priority of security interests in fixtures.

(1) In this section and in the provisions of part 4 of this article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection ~~(5)~~ (4) of section 9-402

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he or she may, on default, subject to the provisions of part 5, remove his or her collateral from the real estate but he or she must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused

by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Sec. 4. Section 9-402, Uniform Commercial Code, is amended to read: 9-402. ~~Formal requisites of financing~~ Financing statement; requirements; form; amendments; fees; mortgage as financing statement; substantial compliance; effect.

(1) A financing statement may be in a form prescribed by the Secretary of State and is sufficient if it ~~gives~~ contains the names of the debtor and the secured party, ~~is signed by the debtor,~~ gives an address of the secured party from which information concerning the security interest may be obtained, ~~gives~~ a mailing address of the debtor and ~~contains~~ a statement indicating the types, or describing the items, of collateral. The secured party may include the social security number or the federal tax identification number of both the secured party and the debtor on the financing statement and other related filings, if available. A Subject to subdivision (2)(a) of section 9-406, a financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, or when the financing statement is filed as a fixture filing (section 9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection ~~(5)~~ (4) of this section. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic, electronic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original, including an electronic original, has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor when it is filed to perfect a security interest in

~~(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or~~

~~(b) proceeds under section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or~~

~~(c) collateral as to which the filing has lapsed; or~~

~~(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).~~

~~(3)~~ The Secretary of State shall prescribe a form substantially as follows to comply with subsection (1):

Name of debtor (or assignor)
Address
Name of secured party (or assignee)
Address

1. This financing statement covers the following types (or items) of property:

(Describe)
.....

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe real estate)
.....

3. (If applicable) The above goods are to become fixtures on (Describe real estate) and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is

4. (If products of collateral are claimed) Products of the collateral are also covered.

Signature of debtor (or assignor)
Signature of secured party (or assignee)

~~(4)~~ Except as provided in this subsection, a

(3) A financing statement may be amended by the filing a writing signed by both the debtor and the secured party, except that of an amendment. An amendment that deletes collateral covered by a financing statement shall be signed by the secured party, and if such amendment is filed electronically it shall be signed electronically pursuant to subsection (3) of section 9-406.

The provisions of this subsection shall be applied retroactively to any financing statement filed before July 1, 1999. ~~filed to show a change of the name of the secured party, the address of the secured party, or both is sufficient when it is signed only by the secured party. The Secretary of State may adopt rules and regulations for the change of a secured party's name or address on multiple financing statements by use of a single amendment, including a reasonable fee for processing of the amendment.~~ An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. Except as provided in this subsection, the fee for such filings shall be as provided in subsection (5) of section 9-403. In this article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

~~(5)~~ (4) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, or a financing statement filed as a fixture filing (section 9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

~~(6)~~ (5) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

~~(7)~~ (6) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, limited liability company, or corporate name of the debtor, whether or not it adds other trade names or the names of the partners or members. Where the debtor so changes his or her name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

~~(8)~~ (7) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. The failure to include the social security number or the federal tax identification number shall not render any filing unperfected.

Sec. 5. Section 9-403, Uniform Commercial Code, is amended to read: 9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer; uniform fees; fee distribution.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) of this section, a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2) of this section. Any such continuation statement must be

~~signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. Such continuation statement shall be signed by the secured party, and if such continuation statement is filed electronically it shall be signed electronically pursuant to subsection (3) of section 9-406. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsections (2) and (3) of section 9-405, including payment of the required fee, or reflect that the person signing the continuation statement is a successor of the secured party of record. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) of this section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. The provisions of this subsection shall be applied retroactively to any continuation statement filed before April 19, 1998, and to any claim or cause of action which has not been finally adjudicated on April 19, 1998 July 1, 1999.~~

(4)(a) Until July 1, 1999, except as provided in subsection (7) of this section, a filing officer shall mark each statement or other document with a consecutive file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(b) Beginning July 1, 1999, except as provided in subsection (7) of this section, a filing officer shall mark or identify each statement or other document with a consecutive file number and with the date and hour of filing and shall make available the statement or a microfilm or other photographic or electronically reproduced copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5)(a) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement, an amendment, a separate statement of assignment, a continuation statement, a partial release, or a full release shall be six dollars, except as provided in subdivision (5)(c) of this section. There shall be no fee for the filing of a termination statement. The uniform fee for each name more than one required to be indexed shall be four dollars. The secured party may at his or her option show a trade name for any person and an extra uniform indexing fee of four dollars shall be paid with respect thereto.

(b) The uniform fee for filing and indexing and for stamping a copy furnished by a lienholder to show the date and place of filing of a lien or an amendment, a lien-notification statement, a separate statement of assignment, a certificate of discharge or subordination, a notice, a certificate of release or nonattachment, partial release, or full release of a lien filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, 11, 12, or 14, Chapter 54, article 2, or ~~Chapter 77, article 39,~~ the Uniform State Tax Lien Registration and Enforcement Act shall be six dollars, except as provided in subdivision (5)(d) of this section. The uniform fee for each name more than one required to be indexed shall be four dollars.

(c) The uniform fee for filing and indexing a copy filed by the secured party by electronic means for an original financing statement, an amendment, a separate statement of assignment, a continuation statement, a partial release, or a full release shall be five dollars. The uniform fee for each name more than one required to be indexed shall be four dollars. The secured party may at his or her option show a trade name for any person and an extra uniform indexing fee of four dollars shall be paid with respect thereto.

(d) The uniform fee for filing and indexing a copy filed by a lienholder by electronic means for a lien or an amendment, a lien-notification statement, a separate statement of assignment, a certificate of discharge or subordination, a notice, a certificate of release or nonattachment, partial release, or full release of a lien filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, 11, 12, or 14, Chapter 54, article 2, or the Uniform State Tax Lien Registration and Enforcement Act shall be five dollars. The uniform fee for each name more than one required to be indexed shall be four dollars.

(6) If the debtor is a transmitting utility (subsection (5) of section 9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is

effective as a fixture filing under subsection ~~(6)~~ (5) of section 9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he or she were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) The provisions of subsections (2) and (3) of this section shall not apply to mortgages or deeds of trust and instruments supplementary or amendatory thereto covering real estate as well as personal property where such property constitutes a portion of the property used in carrying on the business of a public utility or a gas or oil pipeline system and which are executed to secure the payment of money. The lien of such mortgages or deeds of trust and amendments and supplements thereto shall continue in force and effect as to the personal property described therein, together with any interest of the mortgagor in real estate therein described even if the same has been on file five years or more. The instruments filed shall disclose that the mortgagor or grantor therein is then carrying on the business of a public utility or an oil or gas pipeline system or such fact shall be disclosed by an affidavit of the mortgagor or grantor to that effect filed for record with the county clerk.

(9) Until July 1, 1999, any county clerk receiving a fee under subsection (5) of this section for filing any document from which information is required to be transmitted to the Secretary of State shall on a monthly basis forward two dollars of each four-dollar fee and three dollars of each six-dollar fee received pursuant to subsection (5) of this section to the Secretary of State for deposit in the Uniform Commercial Code Cash Fund.

(10)(a) Until July 1, 1999, the Secretary of State shall deposit two dollars of each four-dollar fee and three dollars of each six-dollar fee received pursuant to subsection (5) of this section in the Uniform Commercial Code Cash Fund.

(b) Beginning July 1, 1999, the Secretary of State shall deposit each fee received pursuant to subsection (5) of this section in the Uniform Commercial Code Cash Fund.

Sec. 6. Section 9-404, Uniform Commercial Code, is amended to read: 9-404. Termination statement; fee.

(1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor a termination statement to the effect that he or she no longer claims a security interest under the financing statement, which shall be identified by file number. ~~A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2) of section 9-405, including payment of the required fee, or reflect that the person signing the termination statement is a successor of the secured party of record.~~ If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he or she shall be liable to the debtor for any loss caused to the debtor by such failure and for reasonable attorney's fees and court costs. A termination statement shall be signed by the secured party, and if such statement is filed electronically it shall be signed electronically pursuant to subsection (3) of section 9-406. The provisions of this subsection shall be applied retroactively to any termination statement filed before July 1, 1999.

(2) On presentation to the filing officer of such a termination statement he or she must note it in the index. If he or she has received the termination statement in duplicate, he or she shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof.

(3) The fee for such filings shall be as provided in subsection (5) of section 9-403.

Sec. 7. Section 9-405, Uniform Commercial Code, is amended to read: 9-405. Assignment of security interest; duties of filing officer; fees.

(1)(a) Until July 1, 1999, a financing statement may disclose an

assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in subsection (4) of section 9-403.

(b) Beginning July 1, 1999, a financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark or identify the same as provided in subsection (4) of section 9-403.

(2)(a) Until July 1, 1999, a secured party may assign of record all or a part of his or her rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement as provided in section 9-403. He or she shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, he or she shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he or she shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection ~~(6)~~ (5) of section 9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than sections 1-105, 1-201, 2-107, 9-102 to 9-106, 9-114, 9-203 to 9-205, 9-301, 9-302, 9-304 to 9-308, 9-312, 9-313, 9-318, 9-401 to 9-407, 9-409, 9-501, 9-502, 9-504, and 9-505.

(b) Beginning July 1, 1999, a secured party may assign of record all or a part of his or her rights under a financing statement by the filing in the office of the Secretary of State of a separate written statement of assignment ~~signed by the secured party of record and~~ setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. Such separate statement of assignment shall be signed by the secured party, and if such statement is filed electronically it shall be signed electronically pursuant to subsection (3) of section 9-406. On presentation to the filing officer of such a separate statement, the filing officer shall mark or identify such separate statement as provided in subsection (4) of section 9-403. He or she shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 9-103, he or she shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he or she shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection ~~(6)~~ (5) of section 9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than sections 1-105, 1-201, 2-107, 9-102 to 9-106, 9-114, 9-203 to 9-205, 9-301, 9-302, 9-304 to 9-308, 9-312, 9-313, 9-318, 9-401 to 9-407, 9-409, 9-501, 9-502, 9-504, and 9-505. The provisions of this subdivision shall be applied retroactively to any separate statement of assignment filed before July 1, 1999.

(3) After the disclosure or filing of an assignment under this section the assignee is the secured party of record. A successor of a secured party of record shall be deemed to be the secured party of record without the necessity of disclosure or filing of an assignment under this section.

(4) The fee for such filings shall be as provided in subsection (5) of section 9-403.

Sec. 8. Section 9-406, Uniform Commercial Code, is amended to read: 9-406. Release of collateral; Collateral; duties of filing officer; fees electronic filing; retroactivity.

(1) A secured party of record may by his or her signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsections (2) and (3) of section 9-405, including payment of the required fee, or reflect that the person signing the statement of release is a successor of the secured party of record. The statement of release shall be signed by the secured party, and if such statement is filed electronically it shall be signed electronically pursuant to subsection (3) of this section. Upon presentation of such a statement of release to the filing officer he or she shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing or the financing statement. The fee for such filing shall be as provided in subsection (5) of section 9-403. The provisions of this subsection shall be applied retroactively to any statement filed before July 1, 1999.

(2)(a) No person shall file a financing statement or amendment that adds collateral covered by a financing statement unless the debtor signs the financing statement or amendment or authorizes such filing in a signed writing. Any such financing statement or amendment that is filed electronically shall be signed electronically pursuant to subsection (3) of this section. Upon signing a written security agreement, a debtor authorizes the secured party to file a financing statement and amendments covering the collateral described in the security agreement and any proceeds of such collateral.

(b) Any person who files a financing statement or amendment in violation of subdivision (2)(a) of this section is liable to the debtor for any loss sustained by the debtor as a result of such unauthorized filing.

(3) Any termination statement, continuation statement, separate statement of assignment, statement of release of collateral, or amendment that deletes collateral covered by a financing statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-1701 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Sec. 9. Section 9-412, Uniform Commercial Code, is amended to read: 9-412. Filings; financing or continuation statements filed prior to July 1, 1999; how treated.

~~(1)~~ (1)(a) A financing statement or continuation statement which was filed in the proper place in this state prior to July 1, 1999, which has not lapsed by December 31, 1999, and for which the place of filing has been changed pursuant to section 9-401 shall lose its perfection unless a new continuation statement is filed with the Secretary of State on or after July 1, 1999, but on or before December 31, 1999. Such continuation statement shall identify the original statement by county, file number, and date and time of filing, list the collateral of the original filing and include a statement that the original financing statement is still effective. The filing of a new continuation statement shall preserve the priority of the original filing and shall be effective for five years from the expiration of the original filing or any continuation statement filed before July 1, 1999.

(b) No continuation statement filed pursuant to subsection (1) of this section on or after July 1, 1999, shall be ineffective solely because it: (i) Failed to identify the original statement by county, file number, or the date and time of filing; (ii) indicated the types or described the items of the collateral indicated in the financing statement instead of listing the collateral of the original filing; or (iii) failed to include a statement that the original financing statement is still effective.

(2) The effectiveness of a financing statement or continuation statement which was filed in the proper place in this state prior to July 1, 1999, that lapses on or after July 1, 1999, but on or before December 31, 1999, and for which the place of filing has been changed pursuant to section 9-401 may be continued by the filing of a continuation statement with the Secretary of State in accordance with the provisions of subsection (3) of section 9-403. If the effectiveness of a financing statement or continuation

statement is continued by the filing of a continuation statement prior to July 1, 1999, such financing statement or continuation statement must be continued by the timely filing of a continuation statement in accordance with the provisions of subsection (1) of this section.

(3) The priority of a security interest is not affected by the fact that a continuation statement filed in accordance with this section is filed at a different place than the original financing statement.

Sec. 10. This act becomes operative on July 1, 1999.

Sec. 11. Original sections 52-1307 and 52-1314, Reissue Revised Statutes of Nebraska, and sections 9-313, 9-402 to 9-406, and 9-412, Uniform Commercial Code, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.